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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/669,258	09/25/2003	Robert O. Williams	10071-037-999	3229
20582	7590	01/28/2008		
JONES DAY 222 East 41st Street New York, NY 10017-6702			EXAMINER ROYDS, LESLIE A	
			ART UNIT 1614	PAPER NUMBER
			MAIL DATE 01/28/2008	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.



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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10/669,258	9/25/2003	WILLIAMS ET AL.	10071-037-999

JONES DAY  
222 East 41st Street  
New York, NY 10017-6702

EXAMINER

Leslie A. Royds

ART UNIT	PAPER
1614	20080115

DATE MAILED:

**Please find below and/or attached an Office communication concerning this application or proceeding.**

Commissioner for Patents

NOTICE OF NON-RESPONSIVE AMENDMENT

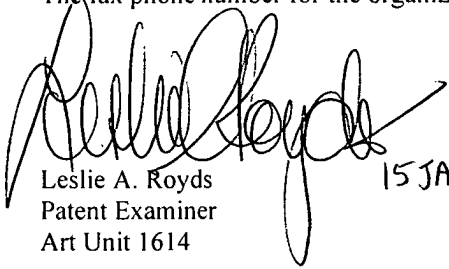
Applicant's response filed October 30, 2007 to the notice of non-responsive amendment dated October 5, 2007 has been received and entered into the present application. Applicant's election of the Invention of Group II (claims 24-40), directed to a method for treating pain comprising topically administering to the skin of a mammal in need thereof an emulsion comprising an antidepressant, an NMDA receptor antagonist, a lipophilic component, water and a surfactant, and the election of the species amitriptyline as the antidepressant, ketamine as the NMDA receptor antagonist, petrolatum as the lipophilic component, PEG-100 as the surfactant, ethoxydiglycol as the lipophilic intradermal penetration enhancer, sorbitol as the humectant, and simethicone as the antifoaming agent, is acknowledged.

However, Applicant's election of "PEG-100" per se as the surfactant is non-compliant because the instant specification does not contain adequate written support for this specie of surfactant and, thus, raises an issue under the provisions of 35 U.S.C. 112, first paragraph. Please see page 19 of the instant specification. Additionally, though Applicant elects particular species of humectant and antifoaming agent, the elected invention of claims 24-40 does not provide for the use of such species as components of the claimed composition. This election of humectant and antifoaming agent is only applicable to the claims as presently written if the invention of Group I is elected.

Accordingly, by issuance of the instant notice, Applicant is afforded the opportunity to elect a species of surfactant that has appropriate written support in the specification of this application, as well as an opportunity to clarify the elections of humectant and/or antifoaming agent (since claims 24-40 of elected Invention II do not provide for the use of such species as components of the claimed composition). Applicant is advised that a properly reply to this notice will: (1) clearly set forth the group of the invention to be examined (either (I) or (II) or (III)), (2) clearly set forth the species of antidepressant, NMDA receptor antagonist, lipophilic component and surfactant elected for examination on the merits, (3) clearly set forth whether a lipophilic penetration enhancer is a component of the emulsion and (4) if a lipophilic penetration enhancer is elected, then the identity of said enhancer must be clearly set forth and (5) clarify the election of species of humectant and/or antifoaming agent, since the claims as presently written of the elected group do not provide for the use of such species as part of the composition for use in the claimed method. A reply that fails to fulfill each and every one of these requirement will again be held NON-COMPLIANT.

Since the above-mentioned response appears to be a bona fide attempt to reply, Applicant is given a TIME PERIOD of ONE (1) MONTH or THIRTY (30) DAYS, whichever is longer, from the mailing date of this notice within which to supply the omission or correction, as well as a proper response to the previous Office Action, in order to avoid abandonment. Extensions of this time period under 37 C.F.R. 1.136(a) are available.

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Leslie A. Royds, whose telephone number is (571)-272-6096. The Examiner can normally be reached Monday through Friday, 9:00 AM to 5:30 PM. If attempts to reach the Examiner are unsuccessful, the Examiner's supervisor, Ardin H. Marschel, can be reached on (571)-272-0718. The fax phone number for the organization where this application or proceeding is assigned is (571)-273-8300.



Leslie A. Royds  
Patent Examiner  
Art Unit 1614

15 JAN 08



ARDIN H. MARSCHEL  
SUPERVISORY PATENT EXAMINER